IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.779 of 2003
in
Writ Petition No l980 of l999

G.S.Raijuria and ors ....Appellants
vs
Mumbai Port Trust and ors..Respondents

Mr.K.P.Anilkumar for appellants
Mr Shyam Mehta i/b Little and co for respondents.

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 25.2.2005

P.C:

l. This appeal is directed against the common order passed by Khandeparkar J. on 30.9.2004 in Writ Petition No.l98l of l999 and Writ Petition No. l327 of 2000. By this order the learned single Judge has set aside the award passed on l7.8.l99l by the Central Government Industrial Tribunal, Mumbai in 5 references bearing Nos.CGIT Nos 39, 40, 4l, 42 and 45 of l993 in relation to the action of dismissal of the appellants workmen by the Mumbai Port Trust. By the impugned award the tribunal has held that though the material on record discloses the commission of misconduct alleged against the workmen, yet the order of dismissal passed against them cannot be sustained on technical grounds, viz non-examination of the panchas, enquiry officer not

considering the order of discharge passed by the criminal court and the punishment ordered by the Chairman is in violation of the Regulation 23. While granting reinstatement the tribunal has held that the workmen would not be entitled for backwages.

2. It is not necessary to state the facts in detail but suffice it to say that the appellants workmen were involved in two incidents one in relation to the incident of theft occurred on l9.2.l987 of l25 boxes of Piston Rings valued at Rs.24,750 by appellant nos. l, 2 and 5 and another in relation of theft on l6/l7-2-l998 of l68 sets of piston rings valued at Rs.33,260 involving the appellant nos. 3 and 4. The criminal case was filed against the appellants who were allegedly involved in the commission of offence of theft in relation to the incidents and they were acquitted and/or discharged. The appellants were also subjected to disciplinary proceedings in relation to the charge of theft and they were found guilty and dismissed from service.

3. At the outset it is required to be stated that the tribunal recorded a categorical finding that

the analysis of the materials placed before it disclosed that the charge sheeted workmen had undoubtedly committed the alleged misconduct. This finding was also confirmed by the learned single Judge. The finding of the tribunal was not challenged by the appellants except appellant no. 4 who had filed Writ Petition No.l327 of 2000 challenging the finding that he wes guilty of misconduct. The learned single Judge held and in our opinion rightly that once the tribunal comes to the conclusion on assessment of the materials on record that those materials disclose that the workmen are guilty of misconduct alleged against them and the workmen are unable to disclose any perversity or arbitrariness in such finding, the tribunal would not be justified in interfering with the punishment imposed on the employees unless the tribunal comes to a conclusion that the punishment imposed is shockingly disproportionate to the proved misconduct. The learned single Judge rightly pointed out that non examination of the panchas would relate to the matter pertaining to sufficiency of materials to prove the misconduct alleged against the employees, but it would not be either a mitigating factor or the relevant factor to decide quantum of punishment to be imposed upon

the employees for the proved misconduct.

4. Mr Anilkumar, learned counsel appearing for the appellants submitted that the subject matter of the disciplinary inquiry was the same as in the criminal case which ultimately ended in an acquittal. He submitted that it is settled position that where criminal courts give a honourable acquittal,normally, it is expedient to drop the same charges or not to proceed with the domestic enquiry and if the domestic inquiry has proceeded on the same subject matter, then in view of the honourable acquittal by the criminal courts the respondents should have exonerated the appellants from the charges of misconduct, particularly because the subject matter of both the enquiry was the same. In any event, according to the learned counsel it was incumbent upon the Inquiry Officer to consider the order of acquittal and/or discharge which he failed to do so thereby rendering the entire proceedings illegal. Mr. Anilkumar placed reliance on two decisions of the Supreme Court in Sulekha Chand and Salak Chand vs Commissioner of Police and ors (l994) l CLR 225 and in M Paul Anthony vs Bharat Gold Mines Ltd and anr, l999 l CLR l032.

5. At the outset,it may be mentioned that it is now a settled position of law that disciplinary proceedings can be legally continued even where the employee is acquitted in the criminal case as the nature and proof required in a criminal case are different from those in the departmental proceeding. In Nelson Motis V. Union of India l992 II CLR 825 the Supreme Court observed:

> "So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal,therefore, cannot conclude the departmental proceedings. Besides, the tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case."

6. In Corporation of Nagpur vs Ramchandra l98l 3 SCR 22 the same issue was considered by the Larger Bench of the Supreme Court and it was observed as under:

> "The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started

> the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so".

7. In Sulekh Chand and Salak Chand v Commissioner of Police (supra), the appellant was promoted from the post of A.S.I. to S.I but he was confirmed with effect from the latter date on the ground that he was charged for offence punishable under sec 5(2) of the Prevention of Corruption Act and that he was kept under suspension and he was also communicated of the adverse remarks. Therefore, his case was considered and he was promoted in l989. It was noticed by the Supreme Court that reasons which prevailed with the D.P.C. were the prosecution under sec 5(2) of the Prevention of Corruption Act and departmental inquiry against the appellant. It was also observed by the Supreme Court as under:

It is not in dispute that the proposed departmental enquiry also is related to the self same offence under section 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge under Sec.5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self same allegations and take appropriate disciplinary action. But as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution under section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by

> the respondents. Under these circumstances, the very foundation on which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date immediate junior was promoted with all consequential benefits"

8. In Paul Anthony's case the objection of the learned counsel of the appellant was that though the proceedings continued in both forums, once a judicial pronouncement is rendered, the findings of the departmental proceedings shall have to go, even though the judgment of the criminal court is later in point of time. The Supreme Court, while holding so, took two vital aspects into account in that case. Firstly, the findings in the departmental proceedings were ex parte and the Supreme Court was of the opinion that the appellant was punished in total violation of the principles of natural justice and that in a criminal case, on identical set of facts, it was found that there was no such recovery made from the residence of the appellant and the whole case of the prosecution was thrown out and the appellant was acquitted. In the situation, therefore the Supreme Court held that the raid and recovery at the residence of the

appellant was not proved, it would be unjust and unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand. Finally in para 22, the Supreme Court summarised the legal position as under:

> "22. The conclusion which are deducible from various decision of this Court referred to above are :
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> (i). Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
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> (ii). If the departmental proceedings and the criminal case are based in identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till conclusions of the criminal cases.

(iii). Where the nature of the charge in a criminal case is grave and whether complicated questions of facts and law are involved in that case will dependent upon nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv). The factor mentioned at 2 and 3 above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to fact that the departmental proceedings cannot be unduly delayed.

(v). If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date. So that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration

may get rid of him at the earliest."

9. In Deepak Hiralal Gohil and anr vs. Bombay Port Trust, 2003 II CLR 28 the division bench of this court, after examining various decisions of the Supreme Court referred to above held as follows:

" l0. The position that emerges from the above discussion is that where the Court acquits a person on the grounds like want of sanction, non-availability of prosecution witnesses, benefit of doubt, a defective charge and such other technical reasons, there will be not difficulty in holding that his employer would be permitted to examine the matter further but if it is entirely the question of appreciating the same evidence and reaching a complete different conclusion thereon, and acquittal then the Courts have been reluctant to permit the employer to overlook or ignore the decision of the Criminal Court. Therefore, it is clear that the fact that the employee was prosecuted on the same charge and was acquitted by itself

> is not sufficient to hold that the domestic enquiry in the very same charge is not maintainable. It has been repeatedly held by the Courts that the purpose and scope of two proceedings if different and, therefore, we are unable to accept the contention of Dr. Kulkarni that when the delinquent employee is acquitted of the criminal offence, departmental proceedings held against him necessarily will have to be quashed or the order passed on the basis of such enquiry is required to be set aside. We feel that it is not possible to lay down a formulae of any universal application in such cases and each case will have to be considered in the light of the broad principles recognized by the Supreme Court."

l0. Our attention was also drawn to the recent decision of the Supreme Court in Krishnakali Tea Estate vs. Akhil Bharatiya Chah Mazdoor Sangh and anr,(2004) 8 SCC 200 where the Supreme Court observed as follows:

> .....It may be some use to us to refer at

this stage to a judgment of this court in the case of State of Rajasthan vs B K Meena(l996) 6 SCC 4l7 wherein it is held thus (SCC p.424,para l7):

" l7. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a less punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

27) From the above, it is seen that the approach and the objectives of the criminal

> proceedings and the disciplinary proceedings are altogether distinct and different. The observations therein indicate that the Labour Court is not bound by the findings of the criminal court".

ll. In the present case the acquittal/discharge was granted to the appellants on the ground of failure on the part of the prosecution to produce evidence.Thus the acquittal was mainly due to the inability of the prosecution to produce vital evidence. By no stretch of imagination it could be said that the order of acquittal was a honourable acquittal. It is also seen from the report of the inquiry officer that the charge of misconduct was duly proved. In our opinion the observations made in para 34 of Paul Anthoney’s case and in the case of Sulekh Chand and Salak Chand have no application to the facts of the present case.

l2. Last submission of Mr.Anilkumar is that there was failure to give opportunity to the appellants to file appeal under service regulations and this has vitiated the entire proceedings. Under regulation 23,if the disciplinary authority is subordinate to the Chairman of the board then the

appeal would lie to the Chairman. However, when the order is passed by the Chairman himself the appeal would lie to the Central Government. The disciplinary authority was the Vice Chairman and the appeal filed against his order was required to be disposed of by the Chairman. But the Chairman, at the time of passing of the order was none other than the person who was Vice Chairman who has passed the order in his capacity as the disciplinary authority. In view of the express provision of regulation 23, the workmen ought to have preferred the appeal to the Central Government and not to the Chairman. Further it is required to be noted that only appellant nos. 2 and 4 have filed the appeal and no appeal was filed by appellant nos. l,3, and 5. Appellant nos. 2 and 4,however, have not challenged the finding of guilt recorded by the tribunal. In the circumstanes in our opinion the learned Judge was right in rejecting the submission that there was deprivation of opportunity of filing appeal as per regulation 23.

In the result appeal is dismissed.